IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.261-SB of 2002

Date of decision: 28th May, 2010

Mohan Lal

… Appellant

Versus

State of Haryana

… Respondent

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. D.R. Punia, Advocate for the appellant.
Mr. Manish Deswal, Deputy Advocate General, Haryana for the State.

KANWALJIT SINGH AHLUWALIA, J. (ORAL)

Present appeal has been filed by Mohan Lal, who was named as an accused in case FIR No.70 dated 11.06.2000 registered at Police Station Cheeka under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, 'the Act').

Case of the prosecution is that on 11th June, 2000, one kilogram of opium was recovered from possession of the appellant. That being of non-commercial quantity, the Court of Special Judge, Kaithal vide its judgment dated 25th January, 2002 held the appellant guilty of an offence punishable under Section 18(b) of the Act and vide a separate order dated 29th January, 2002 sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.10,000/- in

default of payment of fine to further undergo rigorous imprisonment for one year.

Briefly stated, case of the prosecution is that on 11th June, 2000, ASI Brij Mohan, along with his companion police officials, was present in front of Government Girls School, Guhla Road in connection with patrol duty and crime detection. At that time, one person was spotted coming from Cheeka Chowk side and he was carrying a plastic bag in his right hand. Seeing the police party, that person retracted his steps, which caused a suspicion and he was apprehended. On interrogation, that person disclosed his name as Mohan Lal son of Bant Ram. A notice under Section 50 of the Act was served upon the appellant and an offer was given to him to get himself searched in front of a gazetted officer or a Magistrate. The accused appellant gave his consent to be searched in presence of a gazetted officer. A consent memo to this effect was prepared. An information was sent and DSP Guhla was requested to arrive at the spot. In response thereto, Om Parkash, DSP Guhla arrived at the spot, in whose presence search was carried, recovery was effected and the contraband article was seized.

Prosecution examined nine witnesses.

Mr. D.R. Punia, Advocate appearing for the appellant, has submitted that he has gone through the impugned judgment and the evidence of the witnesses. Counsel has further submitted that he will not assail the conviction of the appellant and will accept the impugned judgment as it is. However, learned counsel has submitted that he will assail the order of sentence dated 29th January, 2002, whereby the appellant was sentenced to undergo rigorous imprisonment for a period of five years. Counsel has contended that the sentence of five years awarded to the appellant is excessive and cannot be sustained on the facts and circumstances of the present case. Learned counsel has stated that

occurrence, in the present case, had taken place in the month of June 2000. A period of ten years is going to elapse and the appellant has suffered mental pain and agony of a protracted trial. It is further stated that the appellant has committed no other offence before or after registration of the present case. He is sole breadwinner of his family and he has a large family to support. At the time of occurrence, the appellant was aged about 33 years.

Taking into consideration age, antecedents of the appellant and the fact that he has suffered a protracted trial, this Court is of the opinion that ends of justice will be fully met in case the sentence awarded to the appellant is reduced from five years to one year nine months rigorous imprisonment. However, sentence of fine and default clause are maintained.

With the observations made above, present appeal is disposed of.

[KANWALJIT SINGH AHLUWALIA]
JUDGE

May 28, 2010
rps